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9
10 **BEFORE THE**
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. OT2007-203

13 WENDY LYNN STACKHOUSE
711 Chimney Rock Drive
14 Oceanside, CA 92058

A C C U S A T I O N

15 Occupational Therapy License No. OT 6049

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Heather Martin (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Occupational Therapy, Department
22 of Consumer Affairs.

23 2. On or about January 24, 2003, the California Board of Occupational
24 Therapy issued Occupational Therapy License Number OT 6049 to Wendy Lynn Stackhouse
25 (Respondent). The Occupational Therapy License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on February 28, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2570.26 states:

(a) The board may, after a hearing, deny, suspend, revoke, or place on probation a license, certificate, inactive license, inactive certificate, or limited permit.

(b) As used in this chapter, "license" includes a license, certificate, limited permit, or any other authorization to engage in practice regulated by this chapter.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

5. Section 2570.30 of the Code states:

The board shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a license, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the board or a court of law, or by the voluntary surrender of a license by the licensee.

STATUTORY PROVISIONS

6. Section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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1 7. Section 490 of the Code provides, in pertinent part, that a board may
2 suspend or revoke a license on the ground that the licensee has been convicted of a crime
3 substantially related to the qualifications, functions, or duties of the business or profession for
4 which the license was issued.

5 8. Section 492 of the Code states:

6 Notwithstanding any other provision of law, successful completion of any
7 diversion program under the Penal Code, or successful completion of an alcohol
8 and drug problem assessment program under Article 5 (commencing with section
9 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
10 any agency established under Division 2 ([Healing Arts] commencing with
Section 500) of this code, or any initiative act referred to in that division, from
taking disciplinary action against a licensee or from denying a license for
professional misconduct, notwithstanding that evidence of that misconduct may
be recorded in a record pertaining to an arrest.

11 This section shall not be construed to apply to any drug diversion program
12 operated by any agency established under Division 2 (commencing with Section
500) of this code, or any initiative act referred to in that division.

13 9. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by
15 a board within the department pursuant to law to deny an application for a license
16 or to suspend or revoke a license or otherwise take disciplinary action against a
17 person who holds a license, upon the ground that the applicant or the licensee has
18 been convicted of a crime substantially related to the qualifications, functions,
19 and duties of the licensee in question, the record of conviction of the crime shall
be conclusive evidence of the fact that the conviction occurred, but only of that
fact, and the board may inquire into the circumstances surrounding the
commission of the crime in order to fix the degree of discipline or to determine if
the conviction is substantially related to the qualifications, functions, and duties
of the licensee in question.

20 As used in this section, "license" includes "certificate," "permit,"
21 "authority," and "registration."

22 10. Section 2570.28 states:

23 The board may deny or discipline a licensee for any of the following:

24 (a) Unprofessional conduct, including, but not limited to, the following:

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26 (e) Conviction of a crime or of any offense substantially related to the
27 qualifications, functions, or duties of a licensee, in which event the record of the
conviction shall be conclusive evidence thereof.

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1 (o) Committing any act that would be grounds for denial of a license under
2 Section 480.

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4 11. Section 2570.29 states:

5 In addition to other acts constituting unprofessional conduct within the
6 meaning of this chapter, it is unprofessional conduct for a person licensed under
7 this chapter to do any of the following:

8 (a) Obtain or possess in violation of law, or prescribe, or, except as
9 directed by a licensed physician and surgeon, dentist, optometrist, or podiatrist, to
10 administer to himself or herself, or furnish or administer to another, any
11 controlled substance as defined in Division 10 (commencing with Section 11000)
12 of the Health and Safety Code or any dangerous drug or dangerous device as
13 defined in Section 4022.

14 (b) Use to an extent or in a manner dangerous or injurious to himself or
15 herself, to any other person, or to the public, or that impairs his or her ability to
16 conduct with safety to the public the practice authorized by his or her license, of
17 any of the following:

18 (1) A controlled substance as defined in Division 10 (commencing
19 with Section 11000) of the Health and Safety Code.

20 (2) A dangerous drug or dangerous device as defined in Section
21 4022.

22 (3) Alcoholic beverages.

23 (c) Be convicted of a criminal offense involving the prescription,
24 consumption, or self-administration of any of the substances described in
25 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
26 record pertaining to, the substances described in subdivision (a) of this section, in which event the
27 thereof.

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12. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device
unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this
device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

1 **COST RECOVERY**

2 13. Section 125.3 of the Code provides, in pertinent part, that the Board may
3 request the administrative law judge to direct a licensee found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **DRUG**

7 14. Methamphetamine is a Schedule II controlled substance as designated by
8 Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to
9 Business and Professions Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(December 12, 2007 Criminal Conviction for DUI Drugs on December 5, 2007)**

12 15. Respondent has subjected her license to disciplinary action under section
13 490 and 2570.28, subdivision (e) of the Code in that Respondent was convicted of a crime that is
14 substantially related to the qualifications, functions, and duties of an occupational therapist. The
15 circumstances are as follows:

16 a. On or about December 12, 2007, in a criminal proceeding entitled
17 *People of the State of California v. Wendy L. Stackhouse*, in San Diego County Superior Court,
18 Case No. CN238516, Respondent was convicted on her plea of guilty of violating Vehicle Code
19 section 23103.5, subdivision (a), reckless driving related to being under the influence, a
20 substituted charge for Vehicle Code section 23152, subdivision (a), driving a vehicle while under
21 the influence of a controlled substance, methamphetamine, a misdemeanor.

22 b. As a result of the conviction, on or about December 12, 2007,
23 Respondent was sentenced to three years summary probation and ordered to complete a First
24 Conviction Program, a MADD Victim Impact Panel, and pay \$891 in fees and fines.
25 Respondent was further ordered not to drive with a measurable amount of alcohol or drugs in her
26 system, and not refuse a chemical test when requested by law enforcement.

27 c. Respondent further pled guilty to violating one count of Health and
28 Safety Code section 11377, subdivision (a), possession of a controlled substance, a misdemeanor

1 pursuant to Penal Code section 17, subdivision (b). As a result of the plea, judgment was
2 deferred for 18 months and Respondent was granted diversion pursuant to Penal Code section
3 1000 and ordered to pay \$300.00 in fees.

4 d. The circumstances that led to the guilty pleas and conviction were
5 that on or about the afternoon of December 5, 2007, plainclothes detectives from the Carlsbad
6 Police Department on routine patrol in an unmarked police vehicle observed Respondent driving
7 a vehicle without wearing a seatbelt. The detectives also observed Respondent moving about the
8 vehicle in a rapid manner that caught their attention. The detectives followed Respondent and
9 continued to observe Respondent moving about her vehicle in a rapid and disorganized manner;
10 she moved a large black bag back from the front seat to an area behind the driver's seat. The
11 detectives surmised Respondent's behavior was consistent with a person who was under the
12 influence of a controlled substance. Respondent parked alongside a curb. The detectives parked
13 nearby and contacted Respondent at her driver's side window. The detective explained to
14 Respondent the reason for the stop and that he thought she might be under the influence of a
15 controlled substance. Respondent denied using any drugs recently. Respondent told the
16 detective that she has anxiety and panic attacks but that she was not on any medication for those
17 ailments. The detective had Respondent exit her vehicle. He noted that Respondent's fingers
18 twitched uncontrollably, she moved her arms and legs for no apparent reason, and her speech
19 was rapid. Respondent consented to a search of her vehicle. Behind the driver's seat in the
20 black bag the detective located a tin mint container; inside the container was a plastic baggie
21 containing 0.2 grams of methamphetamine. Respondent stated the methamphetamine belonged
22 to her and that she last used methamphetamine at 8:00 a.m. (approximately five hours earlier).
23 Respondent allowed the detective to take her pulse; it was 116 beats per minute. Respondent
24 was placed under arrest for being under the influence of a controlled substance. Respondent
25 agreed to take the detectives to her residence and she voluntarily produced a glass
26 methamphetamine pipe from a bag inside her closet. Respondent told the detectives she had
27 been smoking methamphetamine for about eight months.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Possession of a Controlled Substance)**

3 16. Respondent has subjected her license to disciplinary action under sections
4 2570.28, subdivision (a) and 2570.29, subdivision (a) of the Code in that on or about December
5 5, 2007, Respondent was found in possession of methamphetamine, a controlled substance and
6 dangerous drug, and pled guilty to possessing methamphetamine on or about December 12,
7 2007, as described in paragraph 15, above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Use of a Controlled Substance)**

10 17. Respondent has subjected her license to disciplinary action under sections
11 2570.28, subdivision (a) and 2570.29, subdivision (b) of the Code in that on or about December
12 5, 2007, Respondent used methamphetamine, a controlled substance and dangerous drug, and
13 later pled guilty to reckless driving while under the influence of methamphetamine, as described
14 in paragraph 15, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Conviction of an Offense Involving Controlled Substances)**

17 18. Respondent has subjected her license to disciplinary action under sections
18 2570.28, subdivision (a) and 2570.29, subdivision (c) of the Code in that on or about December
19 12, 2007, Respondent was convicted of and pled guilty to violating Vehicle Code section
20 23103.5, subdivision (a), reckless driving while under the influence of a controlled substance, a
21 misdemeanor, as described in paragraph 15, above.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Acts That Would be Grounds for Denial of an Occupational Therapy License)**

24 19. Respondent has subjected her license to disciplinary action under section
25 2570.28, subdivision (o) of the Code in that on or about December 12, 2007, Respondent was
26 convicted for reckless driving while under the influence of methamphetamine as described in
27 paragraph 15, above. Such a conviction would be grounds for the denial of an occupational
28 therapy license pursuant to Business and Professions Code section 480.

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